

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-05105-JGB (JDE)	Date	September 17, 2018
Title	Flordeliza A. Hawkins v. Nancy A. Berryhill, Acting Commissioner, etc.		

Present: The Honorable	John D. Early, United States Magistrate Judge
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Maria Barr

n/a

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

n/a

n/a

Proceedings: (In Chambers) Order to Show Cause

On June 8, 2018, Plaintiff Flordeliza A. Hawkins, proceeding pro se, filed a Complaint seeking review of Social Security decision against Nancy A. Berryhill, Acting Commissioner of Social Security ("Complaint," Dkt. 1). On May 21, 2018, the Court issued a Case Management Order (Dkt. 4, "CMO") ordering Plaintiff to "promptly serve the summons and complaint and copy of the [CMO] in the manner required by Rule 4(i) of the Federal Rules of Civil Procedure. Failure to serve process in compliance with Rule 4 within ninety days (90) after the filing of the Complaint may result in the dismissal of the case. See Fed. R. Civ. P. 4(m)." CMO § I. As a result, a proof of service of the summons and complaint was required to be filed by September 7, 2018. As of the date of this Order, Defendant has not appeared.

The docket of this action reflects that as of the date of this Order, Plaintiff has not requested the issuance of a summons. As a result, Plaintiff has not complied with Rule 4(i) of the Federal Rules of Civil Procedure ("Rules" or, individually, "Rule") or the CMO to promptly serve the summons and complaint.

Rule 4(c) that the "plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service." Rule 4(m) provides that if a defendant "is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time." Fed. R. Civ. P. 4(m). However, if a plaintiff shows good cause for the failure to serve, the court must extend the time for service for an appropriate period. *Id.* Further, unless service is waived, proofs of service must be provided to the Court in an appropriate form. Fed. R. Civ. P. 4(l). The Complaint was filed 100 days prior to the date of this Order.

On June 25, 2018, Plaintiff filed a document entitled "Proof of Service" (Dkt. 5) which on

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its face does not purport to reflect a service of the summons in this action and as a result does not constitute effective service under Rule 4 or the CMO. As it is facially invalid to prove proper service, the Court expresses no opinion here as to whether the proof of service filed otherwise would have reflected effective service of process upon a federal governmental agency, but directs Plaintiff to Rule 4(i)(2).

Plaintiff is therefore ORDERED to show good cause in writing **within fourteen (14) days of the date of this Order** why the Court should not recommend the dismissal this action pursuant to Rule 4(m) for failure to timely serve defendant and pursuant to Rule 41(b) for failure to prosecute and failure to comply with a Court order.

Plaintiff is advised that failure to comply with this Order may result in a recommendation that the case be dismissed for lack of prosecution and for failure to comply with a Court order.

Initials of Clerk:

_____ : _____
mba